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National Energy Board | Office national de l'énergie

NewsRelease

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NATIONAL ENERGY BOARD APPROVES EMERA BRUNSWICK PIPELINE APPLICATIONS

Calgary – The National Energy Board (NEB) has issued approval of the Emera Brunswick pipeline.

Emera Brunswick Pipeline Company Ltd. (EBPC) submitted an application to build and operate a 30-inch diameter pipeline that extends 145 kilometres from the Canaport™ Liquefied Natural Gas (LNG) Terminal at Mispec Point, New Brunswick to a point on the US border near St. Stephen, New Brunswick. The NEB also approved the application on the tolls to be charged on the Brunswick Pipeline and EBPC's request to be designated as a Group 2 company.

The application to construct and operate the pipeline was approved on the grounds that the pipeline is necessary to meet present and future energy needs of Canadians. The Board found that the benefits associated with the Brunswick Pipeline of bringing an additional and stable supply of gas into Maritime Canada are significant, real and numerous.

In coming to its decision, the Board weighed the benefits and burdens of the project. The Board recognized that many of the benefits of the pipeline are national or regional in scope and that the majority of the burdens will be shouldered by the local community. Through the imposition of conditions and the guidance provided to EPBC in the NEB's Reasons for Decision, the Board concluded that the burdens to the local community of Saint John will be significantly reduced. On this basis the Board found that the project is in the Canadian public interest.

The NEB imposed conditions upon EBPC to ensure the protection of the environment, high standards of safety and improved public consultation. EBPC will be required to develop and implement the following:

- An Environmental Protection Plan;
- An emergency procedures manual and an emergency response program;
- A detailed public consultation program throughout the construction and operation of the project; and
- Progress reports to the community prior to construction and at six-month intervals during the first 2 years once operation has started.

The Board also affirmed its commitment to ensuring that all stakeholders were provided with a full opportunity to be engaged in the public hearing process and acknowledged the considerable time and effort expended by each participant. The Board specifically commended the participation of individuals and groups who had not previously appeared in front of a quasi-judicial tribunal and indicated that the evidence submitted was highly relevant to its deliberations.

The Board also commended federal government agencies for their cooperation and contribution toward a successful pilot substitution process under the provisions of the *Canadian Environmental Assessment Act*.

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The NEB will continue to regulate EBPC activities throughout the life cycle of the project, including detailed routing, construction, facilities operations and abandonment.

The NEB is an independent federal agency that regulates several aspects of Canada's energy industry. Its purpose is to promote safety and security, environmental protection, and efficient energy infrastructure and markets in the Canadian public interest, within the mandate set by Parliament in the regulation of pipelines, energy development and trade.

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This news release and the Reasons for Decision are available on the Board's Internet site at www.neb-one.gc.ca under *What's New*! In addition, a Backgrounder and Questions & Answers have been prepared with the intent to provide complementary information. This news release, the Backgrounder and the Questions & Answers do not form part of the Board's Reasons for Decision in this matter.

For further information:

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Emera Brunswick Pipeline Project

Backgrounder

Overview

On 23 May 2006, the National Energy Board (NEB) received a facility application from Emera Brunswick Pipeline Company Ltd. (EBPC) to construct and operate a natural gas transmission pipeline from the Canaport™ Liquefied Natural Gas (LNG) Terminal at Mispec Point, near Saint John, New Brunswick, to an export point at the Canada-United States border near St. Stephen, NB. The project includes a pipeline of approximately 145 km – about 35 km of which would be located within the Saint John area, as well as a number of associated facilities.

EBPC also applied for approval of the tolls to be charged on the pipeline and requested that the Board designate EBPC as a Group 2 company for the purpose of toll and tariff regulation.

NEB's Pre-Hearing Public Engagement Initiatives in Saint John, New Brunswick

In April 2006, NEB staff traveled to Saint John to share information with the public about the NEB's role, responsibilities and mandate and to describe how the public could become involved in the NEB's regulatory process. In June 2006, NEB staff held two sessions to assist individuals in selecting an appropriate method of participation in the hearing process and to help them prepare for effective and meaningful participation during the public hearing process.

In October 2006, the Board and staff held two pre-hearing planning sessions to assist parties in their preparation for the NEB public hearing and to invite feedback from intervenors to help in the planning of the oral portion of the hearing.

Oral Hearing

The oral portion of the NEB's public hearing on the Emera Brunswick Pipeline application was held at the Hilton Saint John Trade and Convention Centre over a period of thirteen days starting on Monday, 6 November 2006. Final Argument was accepted by written submission and concluded on 22 December 2006. During the oral portion of the hearing, the Board and intervenors cross-examined the applicant's expert witnesses and the Board heard oral statements from a number of individuals.

The Board wishes to acknowledge the high level of participation by intervenors who invested time and energy in learning not just about the issues to be considered, but also the NEB's hearing procedures.

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Environmental Assessment Report

On 11 April 2007, the NEB released its Environmental Assessment Report (EA Report). The main finding of this Report was that the project is not likely to result in significant adverse environmental effects provided EBPC meets all of its environmental commitments, and all of the NEB's recommendations are implemented. The EA Report is included as an appendix to the Board's Reasons for Decision on the Brunswick Pipeline. A response of the government of Canada to the NEB's EA Report was prepared and approved by Cabinet on 17 May 2007. The government response is also included as an appendix to the Board's Reasons.

The Decision

The Board has determined that the Brunswick Pipeline is in the present and future public convenience and necessity, subject to a number of conditions. The Board also approved the tolls to be charged and has granted Emera's request to be designated a Group 2 company.

The Board's public interest determination as to whether, overall, the Brunswick Pipeline was in the present and future public convenience and necessity required the Board to balance of the benefits and the burdens of the project, based upon analysis of the relevant evidence before the Board. In summary, based on the evidence before the Board, it was determined that the benefits of the Project outweighed its burdens. A detailed discussion of this public interest determination is found in Chapter 8 of the Reasons.

When making its decision on the applications, the NEB considered all the relevant evidence in the following areas:

- Engineering design and safety issues;
- Economic considerations, such as supply and markets;
- Public engagement and Aboriginal consultation;
- Socio-economic and environmental effects of the project, including the government response to the Environmental Assessment Report;
- Land and routing matters; and
- Toll, tariff and financial matters.

Next Steps

This decision is subject to the approval of the Governor in Council, that is, the Governor General acting on advice from the federal cabinet.

Before EBPC can start construction, it must first seek the Board's approval of its detailed route, that is, the exact route the pipeline will follow within the corridor approved by the Board. Under the NEB Act, EBPC must serve notices on all owners whose land could potentially be acquired for the pipeline. These notices must also be published in at least one issue of a publication in general circulation in the area. Subsequent steps in this process may include a detailed route

hearing if letters of opposition are filed by persons who anticipate their land may be adversely affected by the proposed detailed route.

For more details on this process, please see sections 34 to 40 of the NEB Act, and the information series available on the NEB website under the Publications link, in particular, the information series called "*Pipeline Regulation in Canada: A Guide for Landowners and the Public*."

Once the detailed route for the Brunswick Pipeline, or portions of that route, have been approved and pre-construction conditions and commitments have been fulfilled, EBPC can begin construction.

This backgrounder and the Reasons for Decision are available on the Board's Internet site at www.neb-one.gc.ca under *What's New!* In addition, a news release and Questions & Answers have been prepared with the intent to provide complementary information. This backgrounder, the news release and the Questions & Answers do not form part of the Board's Reasons for Decision in this matter.

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Emera Brunswick Pipeline Project

Question & Answers[1]

The National Energy Board (NEB) has approved an application submitted by Emera Brunswick Pipeline Company Ltd. (EBPC) to build and operate a 30-inch diameter pipeline that will extend over a distance of 145 kilometres from the Canaport™ Liquefied Natural Gas (LNG) Terminal at Mispec Point, New Brunswick to a point on the international border near St. Stephen, New Brunswick. The NEB also approved the application on the tolls to be charged on the Brunswick Pipeline and EBPC's request to be designated as a Group 2 company.

The Board recognizes that this application has generated a high level of public participation. The widespread interest in the project has prompted the preparation of this information document.

The NEB would like to provide additional information about the next steps with respect to the Board's involvement with the Brunswick Pipeline.

Is the Board's decision final?

Yes, the Board has made its decision.

Could the Board be requested to re-consider its Decision?

The NEB can be requested to reconsider its decision. Should a person be interested in such a request, they are directed to the requirements listed in the NEB's *Rules of Practice and Procedure*. This document can be found on the Board's website.

Does the Government of Canada have a role with respect to this decision?

The Board's decision is submitted to the Governor in Council for approval, which is the Governor General acting on advice from the federal cabinet.

Can I appeal the decision?

The NEB's decision may be appealed to Canada's Federal Court of Appeal on a point of law or jurisdiction. To appeal a decision, you must seek permission by filing your request, or "leave application", with the Federal Court of Appeal. This step must be taken no later than 30 days following the Board's decision.

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1 These questions and answers are provided for information purposes only. They do not form part of the Board's Reasons for Decision with respect to the Brunswick Pipeline Project.

Before construction can start, will EBPC need additional approvals from the Board?

Yes. The decision of the Board means that the pipeline must be built within the corridor approved by the Board. However, EBPC must still seek the Board's approval of its detailed route, which is the exact route the pipeline will follow within that corridor. In seeking this approval, EBPC will file documents with the Board that are referred to as its plans, profiles and books of reference. These documents will indicate the exact pipeline route that EBPC is seeking approval for.

How do parties provide input to the NEB about the final pipeline route?

Under the NEB Act, EBPC must serve notices to all owners whose land could potentially be acquired for the pipeline. A notice must also be published in at least one issue of a publication in general circulation in the area. Any landowner who is served a notice has the opportunity to send a letter of opposition regarding the pipeline route to the Board within 30 days of being served.

In addition, people who anticipate that their lands may be adversely affected by the proposed detailed route may send letters of opposition to the Board within 30 days of the last notice publication. If the Board receives letters of opposition to the proposed pipeline route, then it may hold a public **detailed route hearing** to allow landowners and people who anticipate that their lands may be adversely affected to explain why they disagree with the proposed detailed route.

What is the purpose of a detailed route hearing?

The purpose of a detailed route hearing is for the NEB to hear evidence as to why there is disagreement with respect to the proposed detailed route. It is not the purpose of this hearing process to challenge the Board's decision to approve the project.

In making its decision on the detailed route, the Board takes into account the letters of opposition that have been filed with it and the representations made by the people during the detailed route hearing. This information will allow the Board to determine the following:

- the route for the pipeline within the approved corridor,
- the most appropriate methods of construction, and
- the most appropriate timing for construction.

Can a detailed route hearing result in the pipeline being built along a marine route?

No. The purpose of the detailed route hearing is to determine where the pipeline will be built within the limits of the corridor that the Board has already approved.

Will I be given any compensation for my costs if I participate in the detailed route hearing?

The NEB does not have the authority to fund participants. However, if you are participating in a detailed route hearing, after the hearing you may submit your claim to the company for the costs of participating. Receipts must show the amount of the actual costs, to whom they are owed and the reason for the costs. For example, legal fees or costs for attending the hearing could be acceptable costs. If you and the company cannot settle on the amount you wish to claim, the NEB can determine a reasonable amount.

Will the same three members of the Board who presided during the Certificate hearing, also preside at the detailed route hearing, if there is one?

Not necessarily. Some of the members could be the same, or the panel could be formed by an entirely different group of members.

What pre-construction activities can EPBC undertake prior to obtaining the Board's approval of its detailed route?

There are a number of pre-construction activities that EBPC may undertake while it is seeking approval of the detailed route. Such activities may include visual surveying of lands with a landowner's permission; ordering of materials and equipment; or requesting proposals for and granting construction contracts.

Can EBPC start construction before any detailed route hearing?

Yes, in certain circumstances it could. If no letters of opposition are received for a portion of the detailed route of a pipeline, then the Board may approve the plans, profiles and books of reference for that portion of the pipeline.

If that happens, EBPC can begin construction under the following situations:

- the construction can only take place on the portion of the detailed route that has been approved;
- the conditions that apply to the pre-construction phase of the project must have been fulfilled; and

- the approved portion of the plans, profile and book of reference must have been deposited at the office of the registrar of deeds located in the area.[2]

What else happens prior to construction?

In addition to seeking approval of its plans, profiles and books of reference, and before starting construction, EBPC must file a number of other documents with the Board that are specified in the Certificate conditions. For example, EBPC must file an environmental protection plan and an access management plan. These documents must both be approved by the Board before the company can begin construction.

Are there other NEB approvals required for the project after construction begins?

Yes. For example, EBPC must seek the Board's permission, or "leave", to open the pipeline to allow the transmission of gas.

How will the Board regulate EBPC?

The Board has imposed a number of conditions upon EBPC. These conditions are included in Appendix V of the written Reasons, and the rationale for each condition can be found in the relevant sections of the text of the written Reasons and in the Board's Environmental Assessment Report (EA Report).

During the hearing, EBPC also committed to undertaking a number of actions.

EBPC must comply with the NEB Act and regulations, the conditions imposed by the Board and all of the commitments that it made during the hearing.

Is there any further public consultation required for the Brunswick Pipeline?

Yes. The Board has required that EBPC file, for the Board's approval, a public consultation program for the construction and operations phases of the project. This program must be filed at least 75 days prior to the planned start of construction.

The Board has stated in the Reasons for Decision that the public consultation program should establish a direct communications link between EBPC and the public, and should also provide a

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2 For more detail on this process, please see sections 34 to 40 of the NEB Act, and the information series available on our website under the Publications link, and in particular, the information series called "Pipeline Regulation in Canada: A Guide for Landowners and the Public."

means to have all public questions and concerns considered and addressed by the appropriate party.

At a minimum, the Board expects EBPC to provide regular progress reports to the community beginning no later than 60 days before the planned start of construction, and continuing every six months for at least two years after the pipeline is in operation.

How will the environment be protected?

The Board determined in its EA Report that as long as EBPC meets all of the commitments that it made in its application and during the hearing, and providing the Board's recommendations are implemented as conditions, then the Project is not likely to result in significant adverse environmental effects.

The Board's recommendations found in the EA Report have since been imposed as conditions to the Certificate. A number of these conditions specifically relate to the protection of the environment. For example, EBPC is required to file an environmental protection plan and conduct environmental follow-up programs.

Is there anything that addresses my concerns about emergency response?

The Board has imposed a number of conditions dealing specifically with this issue. For example, EBPC must file an emergency procedures manual with the Board, conduct an emergency response exercise and develop an emergency response exercise program. More information about this issue and the corresponding conditions can be found in the Reasons for Decision.

The Board found that the provisions contained in the *Onshore Pipeline Regulations, 1999*, and the audit programs of the Board, in conjunction with EBPC's commitments and fulfillment of the Certificate conditions would ensure that the Brunswick Pipeline will be operated in a safe manner.

Is there a way for me to know exactly what EBPC's commitments are?

Yes. In order for the public to obtain a better understanding of EBPC's commitments, the Board has imposed a number of community-oriented measures. For example, at least 120 days before the planned start of construction, EBPC is required to file with the Board and to post on its company website, a table listing the following:

- all commitments made by the company during the proceedings;
- all conditions imposed by the NEB; and
- the deadlines associated with each.

How does the Board ensure EBPC will do what it committed to and what the Board has conditioned?

The Board will ensure EBPC complies with the following:

- its own commitments made in the application and during the hearing;
- the conditions on the Certificate;
- any further terms and conditions that may be imposed, for example, on the approval of a detailed route; and
- the NEB Act and applicable regulations, such as the *Onshore Pipeline Regulations, 1999*.

There are various methods to ensure compliance, including audits and inspections. The Board routinely conducts audits and inspections of pipeline projects to verify regulatory compliance. These regulatory activities continue throughout the life of a project.

For example, inspections may take place to ensure EBPC is meeting conditions. If it was determined that EBPC was not meeting these conditions, then the Board can take action to enforce them. This may include talking to EBPC, issuing a written request to correct the problem or, in certain circumstances, ordering the company to stop construction or operation.

What will be the NEB's role from this point on?

The NEB takes a lifecycle approach to regulation. In this approach, the Board will regulate the Brunswick Pipeline from its construction to its abandonment. Even at the end of the project's life, EBPC will have to apply to the Board for approval to abandon the operation of its pipeline.

Some of the methods that the Board uses in its lifecycle approach include the following:

- ensuring compliance with conditions, regulations and the NEB Act;
- requiring additional applications for certain activities specified in the Act and in regulations;
- imposing reporting obligations;
- ensuring ongoing informal communication with the company;
- conducting audits; and
- inspecting the facilities.

If I have concerns about how the Brunswick Pipeline is being constructed or operated, what should I do?

We encourage anyone with concerns about the pipeline to raise them directly, where possible, with EBPC, to provide the company with an opportunity for more immediate resolution. For example, landowners or those living near the pipeline may be the first people to notice potential

environmental matters associated with the construction or operation of the pipeline. In such cases, raising the issue directly with EBPC may be most efficient way to address the problem.

If you are not satisfied with EBPC's response to your concerns or if you have a concern with how the Brunswick Pipeline is being constructed or operated, you can also contact the NEB to discuss the matter.

How are concerns by landowners addressed by the Board?

If you are a landowner and the Brunswick Pipeline crosses your land, you may contact the NEB and request access to one of the Board's programs to help you work out some of the issues that you may have with EBPC.

The Landowner Complaint Resolution Program and the Appropriate Dispute Resolution (ADR) process involve informal and formal options for resolving outstanding issues.

What is Appropriate Dispute Resolution (ADR)?

ADR is available throughout the lifecycle of the pipeline to help resolve issues arising from the project. ADR may take many forms, including workshops, mediations, or facilitations. For example, ADR could take the form of a meeting between you and EBPC, which may be facilitated by our trained NEB staff or by another neutral third party.

Numerous issues could be resolved through the use of the Board's ADR process. Issues such as the following could be discussed during ADR activities to try to achieve voluntary resolution between the parties:

- the timing and methods related to reclamation activities;
- mitigation measures during construction;
- crossings;
- detailed routing concerns; and
- compensation.

What is the Landowner Complaint Resolution Program?

The Landowner Complaint Resolution Program is the process through which the Board deals with landowner complaints. It provides a number of options for the tracking and resolution of complaints. The process may involve informal discussion with the parties, inspections or site visits, ADR, and could eventually require a Board decision on an issue.

What if EBPC and I cannot reach a voluntary resolution?

Under the Landowner Complaint Resolution Program, the Board may be requested to make an order or give a direction with respect to certain unresolved issues between EBPC and a landowner, although it is always preferable for the parties to reach a mutually satisfactory resolution.

Can the Board give an order or direction on compensation matters related to the pipeline?

No. The Board does not have the authority to make decisions or orders on compensation matters. Should compensation issues not be resolved voluntarily through ADR, there are potentially applicable negotiation and arbitration processes set out in the NEB Act which are administered by the Minister of Natural Resources.

How can I contact the Board?

E-mail
The NEB has a general e-mail account for all energy-related inquiries. You can submit your question to info@neb-one.gc.ca

Telephone/ Fax
You may contact the NEB at 403-292-4800 or toll free at 1-800-899-1265.
To send a fax, dial 403-292-5503 or toll free 1-877-288-8803.

Mail
Our mailing address is:

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Where can I find more information?

NEB website
The NEB website contains information on NEB activities, regulatory documents and general energy information. The website can be accessed at: www.neb-one.gc.ca.

NEB Library

The NEB Library is an excellent source of information for people interested in energy issues or NEB matters. Library staff can respond to inquiries via e-mail, telephone or mail.
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